

**Assembly Bill No. 1032**

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Passed the Assembly September 12, 2007

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*Chief Clerk of the Assembly*

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Passed the Senate September 10, 2007

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2007, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 5653 of, to amend, repeal, and add Section 5653.7 of, and to add and repeal Section 5653.6 of, the Fish and Game Code, and to amend Section 6217.1 of the Public Resources Code, relating to fish and wildlife.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1032, Wolk. Dredging: closed waters: wild trout: endangered or threatened species.

(1) Existing law prohibits the use of any vacuum or suction dredge equipment by any person in any river, stream, or lake of this state without a permit issued by the Department of Fish and Game. Under existing law, it is unlawful to possess a vacuum or suction dredge in areas, or in or within 100 yards of waters, that are closed to the use of vacuum or suction dredges. A violation of the permit requirement is a misdemeanor. The department is authorized to close areas otherwise open for dredging and for which permits have been issued if there is an unanticipated water level change and the department determines that closure is necessary to protect fish and wildlife resources.

The Trout and Steelhead Conservation and Management Planning Act of 1979 finds and declares that it is the policy of the state to establish and maintain wild trout stocks in suitable waters of the state and establish angling regulations designed to maintain the wild trout fishery in those waters by natural reproduction. The act requires the department to determine whether each stream or lake should be managed as a wild trout fishery, or whether its management should involve the planting of trout. The act states the intent of the Legislature that the Fish and Game Commission maintain a specified wild trout program.

This bill, except as specified, would prohibit suction dredge mining on the Klamath, Salmon, and Scott Rivers, and on certain tributaries of those rivers. The bill would increase the fee for a permit for the use of vacuum or suction dredge equipment. The bill would also prohibit suction dredge mining in specified thermal refugia, as defined. A person violating one of those prohibitions would be guilty of a misdemeanor, thereby imposing a

state-mandated local program by creating a new crime. The prohibitions would be repealed on January 1, 2011, or on the date on which the Director of Fish and Game has certified to the Secretary of State that the department has completed an environmental review of its existing suction dredge mining regulations and filed a certified copy of new regulations with the Secretary of State, whichever occurs first.

The bill, until January 1, 2011, or until the department has completed an environmental review of its existing suction dredge mining regulations and filed a certified copy of new regulations with the Secretary of State, whichever occurs first, would close designated stream and river segments and lakes to motorized suction dredging.

On and after January 1, 2011, or on and after the date on which the director certifies to the Secretary of State that the department has completed an environmental review of its existing suction dredge mining regulations and filed a certified copy of new regulations with the Secretary of State, whichever occurs first, the bill would repeal those stream and river segment and lake closures, and would again authorize the department to close areas otherwise open for dredging and for which permits have been issued, if there is an unanticipated water level change and the department determines that closure is necessary to protect fish and wildlife resources.

(2) Existing law establishes the Salmon and Steelhead Trout Restoration Account, and provides for the allocation of funds deposited in that account for various purposes related to the management and restoration of fish habitat.

This bill would specify that money in the account may be allocated by the department for the purposes of conducting court-ordered environmental review of its existing suction dredge mining permitting program pursuant to the California Environmental Quality Act, and to promulgate regulations, as necessary, pursuant to the Administrative Procedure Act, to protect Coho salmon, other species listed as threatened or endangered, and other special status species, as ordered by the court in a specified court action.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by

the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 5653 of the Fish and Game Code is amended to read:

5653. (a) The use of any vacuum or suction dredge equipment by any person in any river, stream, or lake of this state is prohibited, except as authorized under a permit issued to that person by the department in compliance with the regulations adopted pursuant to Section 5653.9. Before any person uses any vacuum or suction dredge equipment in any river, stream, or lake of this state, that person shall submit an application for a permit for a vacuum or suction dredge to the department, specifying the type and size of equipment to be used and other information as the department may require.

(b) Under the regulations adopted pursuant to Section 5653.9, the department shall designate waters or areas wherein vacuum or suction dredges may be used pursuant to a permit, waters or areas closed to those dredges, the maximum size of those dredges that may be used, and the time of year when those dredges may be used. If the department determines, pursuant to the regulations adopted pursuant to Section 5653.9, that the operation will not be deleterious to fish, it shall issue a permit to the applicant. If any person operates any equipment other than that authorized by the permit or conducts the operation in any waters or area or at any time that is not authorized by the permit, or if any person conducts the operation without securing the permit, that person is guilty of a misdemeanor.

(c) The department shall issue a permit upon the payment, in the case of a resident, of a base fee of one hundred dollars (\$100), as adjusted under Section 713, when an onsite investigation of the project size is not deemed necessary by the department, and a base fee of two hundred fifty dollars (\$250), as adjusted under Section 713, when the department deems that an onsite investigation is necessary. In the case of a nonresident, the base fee shall be two hundred thirty dollars (\$230), as adjusted under Section 713, when

an onsite investigation is not deemed necessary, and a base fee of three hundred dollars (\$300), as adjusted under Section 713, when an onsite investigation is deemed necessary.

(d) It is unlawful to possess a vacuum or suction dredge in areas, or in or within 100 yards of waters, that are closed to the use of vacuum or suction dredges, including, but not limited to, waters closed by the department pursuant to Section 5653.7.

SEC. 2. Section 5653.6 is added to the Fish and Game Code, to read:

5653.6. (a) As used in this section, “thermal refugia” means an area within 500 feet up the named tributary from the confluence with the main stem and 500 feet upstream and downstream on the main stem from the confluence of the tributary with the main stem.

(b) Notwithstanding any other provision of law, suction dredge mining is not permitted in the following areas:

(1) On the main stem of the Klamath River from its confluence with the Trinity River to Iron Gate Dam, except for a period of each year commencing July 1 and ending September 15.

(2) On the following tributaries of the Klamath River at any time of the year:

- (A) Indian Creek.
- (B) Elk Creek.
- (C) Dillon Creek.
- (D) Independence Creek.
- (E) Bluff Creek.
- (F) Red Cap Creek.
- (G) Camp Creek.
- (H) Clear Creek.

(3) On all other Klamath River tributaries, except for a period of each year commencing July 1 and ending September 15.

(4) On the main stem of the Salmon River from its confluence with the Klamath River to the Forks of the Salmon River (the confluence of the North and South Forks of the Salmon River) at any time during the year.

(5) On the North and South Forks of the Salmon River, except for a period of each year commencing July 1 and ending September 15.

(6) On the following tributaries of the Salmon River at any time of the year:

- (A) Butler Creek.

- (B) East Fork Knownothing Creek.
- (C) Indian Creek.
- (D) Kelly Gulch.
- (E) Knownothing Creek.
- (F) Little North Fork.
- (G) Methodist Creek.
- (H) Negro Creek.
- (I) Nordheimer Creek.
- (J) Specimen Creek.
- (7) On the Scott River from its mouth to headwaters, except for a period of each year commencing July 1 and ending September 15.
- (8) On the following tributaries of the Scott River at any time of the year:
  - (A) Big Mill Creek (East Fork).
  - (B) Boulder Creek (South Fork).
  - (C) Canyon Creek.
  - (D) Etna Creek.
  - (E) French Creek.
  - (F) Kangaroo Creek (East Fork).
  - (G) Kelsey Creek.
  - (H) Kidder Creek.
  - (I) McAdam Creek.
  - (J) Mill Creek (Scott Bar).
  - (K) Mill Creek (also known as Shackleford/Mill Creek).
  - (L) Miners Creek.
  - (M) Moffett Creek.
  - (N) Patterson Creek.
  - (O) Shackleford Creek.
  - (P) South Fork Scott River.
  - (Q) Sugar Creek.
  - (R) Tompkins Creek.
  - (S) Wildcat Creek.
  - (T) Wooliver Creek.
- (c) Suction dredge mining is not permitted at any time in the following thermal refugia:
  - (1) The thermal refugia on all direct tributaries on the Klamath, Salmon, and Scott Rivers that are closed to suction dredge mining for the entire year as listed in subdivision (b).

(2) The thermal refugia areas at the confluence of the following tributaries with the main stem of the Klamath River:

- (A) Beaver Creek.
- (B) Bluff Creek.
- (C) Bogus Creek.
- (D) Boise Creek.
- (E) Camp Creek.
- (F) Clear Creek.
- (G) Coon Creek.
- (H) Elk Creek.
- (I) Grider Creek.
- (J) Hopkins Creek.
- (K) Horse Creek.
- (L) Hunter Creek.
- (M) Independence Creek.
- (N) Indian Creek.
- (O) Irving Creek.
- (P) Little Grider Creek.
- (Q) Pearch Creek.
- (R) Pewan Creek.
- (S) Red Cap Creek.
- (T) Rogers Creek.
- (U) Salmon River.
- (V) Salt Creek.
- (W) Scott River.
- (X) Slate Creek.
- (Y) Swillup Creek.
- (Z) Thomas Creek.
- (AA) Ti Creek.
- (AB) Tom Marten Creek.
- (AC) Trinity River.
- (AD) Ukonon Creek.

(3) The thermal refugia at the confluence of all tributaries on the North Fork of the Salmon River from Eddie Gulch to the Forks of the Salmon (confluence of the North and South Forks of the Salmon River) and Crapo Creek on the mainstem below the Fork of the Salmon.

(d) Suction dredge mining on any water listed in this section during a period established in this section shall be permitted in accordance with Section 5653.

(e) A violation of subdivision (b) or (c) shall be subject to the same penalty as that provided for permit violations in subdivision (b) of Section 5653.

(f) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless, prior to January 1, 2011, the director certifies to the Secretary of State that both of the following have occurred, in which case this section shall be repealed on the date of that certification:

(1) The department has completed the environmental review of its existing suction dredge mining regulations, as ordered by the court in the case of Karuk Tribe of California et al. v. California Department of Fish and Game et al., Alameda County Superior Court Case No. RG 05211597.

(2) The department has transmitted for filing with the Secretary of State pursuant to Section 11343 of the Government Code, a certified copy of the new regulations adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, whichever occurs first.

SEC. 3. Section 5653.7 of the Fish and Game Code is amended to read:

5653.7. (a) In the event of an unanticipated water level change, if the department determines that it is necessary to protect fish and wildlife resources, the department may close areas that were otherwise opened for dredging and for which permits were issued pursuant to Section 5653.

(b) In addition to those Wild and Heritage Trout waters designated pursuant to Fish and Game Commission policy or Section 7260 where motorized suction dredging is not permitted at any time by Section 228.5 of Title 14 of the California Code of Regulations, motorized suction dredging shall not occur within the following stream and river segments and lakes:

(1) Feather River, Middle Fork, from Oroville Reservoir upstream to the Sloat vehicle bridge, excluding tributaries (Butte and Plumas Counties).

(2) Lavezola Creek (Sierra County).

(3) Nelson Creek, upstream from the confluence with the Middle Fork Feather River excluding tributaries (Plumas County).

(4) North Fork American River, from the Iowa Hill Bridge to the confluence with Lake Clementine (Placer County).



(5) Rubicon River, from the confluence with the Middle Fork American River upstream to Hell Hole Dam excluding tributaries (Placer County).

(c) The Legislature finds and declares that the amendments to this section made during the 2007–08 Regular Session apply solely to suction dredging activities conducted for instream goldmining purposes. This section does not expand or provide new authority for the department to close or regulate dredging conducted for flood control or navigational purposes governed by other state or federal law.

(d) This section does not prohibit or restrict nonmotorized recreational mining activities, such as gold panning.

(e) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless, prior to January 1, 2011, the director certifies to the Secretary of State that both of the following have occurred, in which case this section shall be repealed on the date of that certification:

(1) The department has completed the environmental review of its existing suction dredge mining regulations, as ordered by the court in the case of Karuk Tribe of California et al. v. California Department of Fish and Game et al., Alameda County Superior Court No. RG 05211597.

(2) The department has transmitted for filing with the Secretary of State pursuant to Section 11343 of the Government Code, a certified copy of the new regulations adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. Section 5653.7 is added to the Fish and Game Code, to read:

5653.7. (a) In the event of an unanticipated water level change, if the department determines that it is necessary to protect fish and wildlife resources, the department may close areas that were otherwise opened for dredging and for which permits were issued pursuant to Section 5653.

(b) This section shall become operative on January 1, 2011, unless, prior to January 1, 2011, the director certifies to the Secretary of State that both of the following have occurred, in which case this section shall become operative on the date of that certification:

(1) The department has completed the environmental review of its existing suction dredge mining regulations, as ordered by the court in the case of Karuk Tribe of California et al. v. California Department of Fish and Game et al., Alameda County Superior Court No. RG 05211597.

(2) The department has transmitted for filing with the Secretary of State pursuant to Section 11343 of the Government Code, a certified copy of the new regulations adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 5. Section 6217.1 of the Public Resources Code is amended to read:

6217.1. (a) This section and the process described in this section governs the expenditure of any funds received by the State of California from the federal government for the purposes of salmon and steelhead trout conservation and restoration, the expenditure of funds authorized for the Coastal Watershed Salmon Habitat Program pursuant to Article 7 (commencing with Section 79104.200) of Chapter 6 of Division 26 of the Water Code, and the expenditure of funds appropriated to the Department of Fish and Game for salmon and steelhead trout conservation and restoration from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund pursuant to Article 5 (commencing with Section 5096.650) of Chapter 1.696 of Division 5 of the Public Resources Code.

(b) For purposes of this section, “project” means an activity that improves fish habitat in coastal waters utilized by salmon and anadromous trout species.

(c) (1) The Department of Fish and Game shall grant funds from the Salmon and Steelhead Trout Restoration Account in the Resources Trust Fund, as follows:

(A) At least 87.5 percent of the funds shall be allocated as project grants through the existing grant program operated by the fisheries management program of the Department of Fish and Game.

(B) Not more than 12.5 percent of the funds may also be used for project contract administration activities and biological support staff.

(2) (A) A project shall require the consent of a willing landowner, and emphasize the development of coordinated watershed improvement activities.

(B) Projects that restore habitat for salmon and anadromous trout species that are eligible for protection as listed or candidate species under state or federal endangered species acts shall be given top funding priority.

(C) Projects shall be cost-effective and treat causes and not symptoms of fish habitat degradation. Projects may implement instream, riparian, water quality, water quantity, and watershed prescriptions and shall be designed to restore the structure and function of fish habitat.

(3) Any grant funds allocated to a project that exceed the actual cost of completing the project shall be returned to the Salmon and Steelhead Trout Restoration Account.

(d) (1) A citizen's advisory committee shall be appointed by the Director of Fish and Game to give advice on the grant program.

(2) The advisory committee shall consist of seven representatives recommended by the California Advisory Committee on Salmon and Steelhead Trout, one representative from the agriculture industry, one representative from the timber industry, one representative of public water agency interests, one academic or research scientist with expertise in anadromous fisheries restoration, and three county supervisors from coastal counties in which anadromous trout exist. The county supervisor members shall be recommended by the California State Association of Counties.

(3) The advisory committee shall provide oversight of, and recommend priorities for, grant funding under this section. In making funding decisions, the Department of Fish and Game shall consider the project selection priorities established by the advisory committee.

(4) Members of any advisory committee established for these purposes shall be reimbursed for travel and incidental expenses related to the performance of their duties under this section. Reimbursement for the advisory committee created pursuant to this section shall be made from the funds designated in subparagraph (B) of paragraph (1) of subdivision (c). Reimbursement for other Department of Fish and Game salmon

and steelhead trout advisory committees shall be funded by appropriate sources.

(5) If a member of the advisory committee, or a member of his or her immediate family, is employed by a grant applicant, the employer of a grant applicant, or a consultant or independent contractor employed by a grant applicant, the advisory committee member shall make that disclosure to the other members of the committee, and shall not participate in reviewing or making recommendations on the grant application of that applicant.

(e) Except as provided in subdivision (f), the money in the Salmon and Steelhead Trout Restoration Account shall be allocated as follows:

(1) Not less than 65 percent of the money shall be used for salmon habitat protection and restoration projects. Of that amount, at least 75 percent shall be used for watershed (upslope) and riparian area protection and restoration activities. These activities may include, but are not limited to, grants to acquire and install fish screens to protect juvenile and adult salmon and steelhead trout from entrapment in water diversions, and grants to remove substandard culverts, stream crossings, and bridges that constitute barriers to spawning of salmon and steelhead trout and passage of fish. These funds may also be used for the acquisition, from willing sellers, of conservation easements for riparian buffer strips along coastal rivers and streams to protect salmon and steelhead trout habitat or for projects that protect and improve water quality and quantity.

(2) Up to 35 percent of the money shall be allocated for any of the uses listed in this paragraph.

(A) Watershed evaluation, assessment, and planning necessary to develop a site-specific and clearly prioritized plan to implement watershed improvements.

(B) Multiyear grants for watershed planning and project monitoring and evaluations.

(C) Watershed organization support and assistance.

(D) Project maintenance and monitoring after the project implementations are complete.

(E) Public school watershed and fishery conservation education projects.

(F) Private sector technical training and education project grants, including teaching private landowners about practical means of

improving land and water management practices that, if implemented, will contribute to the protection and restoration of salmon stream habitat; scholarship funding for workshops and conferences that teach restoration techniques; operation of nonprofit restoration technical schools; and production of restoration training and education workshops and conferences.

(G) Fish and wildlife habitat improvements, as defined by Section 4793, and authorized under the California Forestry Incentive Program (CFIP).

(H) The salmon restoration project of the California Conservation Corps.

(I) The state's share of the federal Watershed Stewards Program.

(J) Monitoring projects that utilize protocols approved by the Department of Fish and Game and the National Marine Fisheries Service (NMFS) to provide baseline or trend data, or both, for anadromous fish populations or the physical and biological factors known to be limiting recovery.

(K) Artificial propagation programs designed to restore depleted stocks of salmonids that comply with the directives of the joint Department of Fish and Game and NMFS Hatchery Operations Review Committee.

(3) Notwithstanding the percentage split set forth in paragraphs (1) and (2), money in the Salmon and Steelhead Trout Restoration Account may be allocated by the Department of Fish and Game for the purposes of conducting court-ordered environmental review of its existing suction dredge mining permitting program pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) and to promulgate regulations, as necessary, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), to protect Coho salmon, other species listed as threatened or endangered, and other special status species, as ordered by the court in the case of Karuk Tribe of California et al. v. California Department of Fish and Game et al., Alameda County Superior Court Case No. RG 05211597.

(f) The advisory committee, in any fiscal year, may make a recommendation to the Department of Fish and Game to allocate money from the Salmon and Steelhead Trout Restoration Account for the purposes stated in subdivision (e), but in different

percentage requirements than the 65/35 split stated in paragraphs (1) and (2) of that subdivision. Following that recommendation, the Director of Fish and Game may suspend the percentage requirements stated in paragraphs (1) and (2) of subdivision (e) for that fiscal year only.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved \_\_\_\_\_, 2007

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*Governor*